

2SHB 1488 - H AMD 832

By Representative Hunter

ADOPTED AS AMENDED 02/14/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Commercial decabromodiphenylether" means the chemical mixture
6 of decabromodiphenylether, including associated polybrominated diphenyl
7 ether impurities not intentionally added. No single polybrominated
8 diphenyl ether impurity shall exceed one percent by mass of the mixture
9 and the combination of all polybrominated diphenyl ether impurities
10 shall not exceed four percent by mass of the mixture.

11 (2) "Department" means the department of ecology.

12 (3) "Electronic enclosure" means the plastic housing that encloses
13 the components of electronic products, including but not limited to
14 televisions and computers.

15 (4) "Manufacturer" includes any person, firm, association,
16 partnership, corporation, governmental entity, organization, or joint
17 venture that produces a product containing polybrominated diphenyl
18 ethers or an importer or domestic distributor of a noncombustible
19 product containing polybrominated diphenyl ethers. A manufacturer does
20 not include a retailer:

21 (a) Of a private label brand or cobranding; or

22 (b) Who assembles components to create a single electronic product
23 based on an individual consumer preference.

24 (5) "Polybrominated diphenyl ethers" means chemical forms that
25 consist of diphenyl ethers bound with bromine atoms. Polybrominated
26 diphenyl ethers include, but are not limited to, the three primary
27 forms of the commercial mixtures known as pentabromodiphenylether
28 (penta-bde), octabromodiphenylether (octa-bde), and
29 decabromodiphenylether (deca-bde).

1 (6) "Retailer" means a person who offers a product for sale at
2 retail through any means including, but not limited to, remote
3 offerings such as sales outlets, catalogs, or the internet, but does
4 not include a sale that is a wholesale transaction with a distributor
5 or a retailer. A retailer does not include a person, firm,
6 association, partnership, corporation, governmental entity,
7 organization, or joint venture that both manufactures and sells a
8 product at retail.

9 (7) "Technically feasible alternative that is available at a
10 reasonable cost" means an alternative that is available at a cost and
11 in sufficient quantity to permit the manufacturer or user to maintain
12 an economically viable product.

13 (8) "Transportation vehicle" means any mechanized vehicle that is
14 used to transport goods or people including, but not limited to,
15 airplanes, automobiles, motorcycles, trucks, buses, trains, boats,
16 ships, streetcars, or monorail cars.

17 (9) "Used product" means any product that has been previously
18 owned, purchased, or sold in commerce. "Used product" does not include
19 any product manufactured after January 1, 2007.

20 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (2) of
21 this section and sections 3 and 4 of this act, after January 1, 2007,
22 no person may manufacture, knowingly sell, offer for sale, distribute
23 for sale, or distribute for use in this state noncomestible products
24 containing polybrominated diphenyl ethers.

25 (2) Subsection (1) of this section does not apply to:

26 (a) Products containing decabromodiphenylether except as provided
27 in section 4 of this act;

28 (b) The sale or distribution of any used transportation vehicle
29 with component parts containing polybrominated diphenyl ethers;

30 (c) The sale of any used transportation vehicle parts, or new
31 transportation vehicle parts manufactured before January 1, 2007, that
32 contain polybrominated diphenyl ethers;

33 (d) The manufacture, sale, repair, distribution, maintenance,
34 refurbishment, or modification of equipment containing polybrominated
35 diphenyl ethers and used primarily for military or federally funded
36 space program applications. This exemption does not cover consumer-
37 based goods with broad applicability;

1 (e) The sale or distribution by a business, charity, or private
2 party of any used product containing polybrominated diphenyl ethers; or
3 (f) Medical devices.

4 (3) In-state retailers in possession of products on January 1,
5 2007, that are banned for sale under subsection (1) of this section may
6 exhaust their stock through sales to the public.

7 NEW SECTION. **Sec. 3.** A manufacturer or user of safety systems
8 required by the federal aviation administration may apply for an
9 exemption for a specific use of penta-bde or octa-bde by filing a
10 written petition with the department. Such uses may include the repair
11 or replacement by a manufacturer or user of safety systems required by
12 the federal aviation administration. The exemption may be granted for
13 a term not to exceed eighteen months and may be renewed upon written
14 application if the department finds that the specific use of penta-bde
15 or octa-bde continues to meet the criteria of this section and the
16 manufacturer or other persons comply with the conditions of its
17 original approval. The department may grant an exemption for a
18 specified use of penta-bde or octa-bde with or without conditions upon
19 finding that the petitioner has demonstrated that:

20 (1) A technically feasible alternative to the use of penta-bde or
21 octa-bde is not available at reasonable cost; or

22 (2) The potential harm to public health and the environment
23 directly posed by a technically feasible and available alternative is
24 greater than the potential harm posed by penta-bde or octa-bde.

25 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
26 this section and section 5 of this act, after July 1, 2010, no person
27 may manufacture, knowingly sell, offer for sale, distribute for sale,
28 or distribute for use in this state any television or computer that has
29 an electronic enclosure that contains commercial
30 decabromodiphenylether.

31 (2) Except as provided in subsection (3) of this section and
32 section 5 of this act, after July 1, 2012, no person may manufacture,
33 knowingly sell, offer for sale, distribute for sale, or distribute for
34 use in this state any of the following products:

35 (a) Upholstered furniture intended for indoor use in a home or

1 other residential occupancy that contains commercial
2 decabromodiphenylether; or

3 (b) Mattresses and mattress pads that contain commercial
4 decabromodiphenylether.

5 (3) The following are exempt from subsections (1) and (2) of this
6 section:

7 (a) The manufacture, sale, repair, distribution, maintenance,
8 refurbishment, or modification of any raw material or component part
9 used in a transportation vehicle or any new transportation vehicle with
10 component parts, including original parts and spare parts, containing
11 commercial decabromodiphenylether;

12 (b) The use of commercial decabromodiphenylether in the
13 maintenance, refurbishment, or modification of transportation
14 equipment; or

15 (c) The manufacture, sale, or distribution of any new product or
16 product component consisting of recycled or used materials containing
17 commercial decabromodiphenylether.

18 NEW SECTION. **Sec. 5.** If the department and the department of
19 health, in consultation with the director of fire protection, find that
20 a safer technically feasible alternative to the use of commercial
21 decabromodiphenylether is not available at reasonable cost, the
22 department and the department of health may jointly by rule grant an
23 exemption to allow for the manufacture, sale, or distribution of
24 products prohibited from manufacture, sale, or distribution under
25 section 4 of this act between July 1, 2010, and July 1, 2012. The
26 department and the department of health may jointly by rule renew the
27 exemption for an additional period of two years if the department and
28 the department of health find that a safer technically feasible
29 alternative to the use of commercial decabromodiphenylether is not
30 available at reasonable cost.

31 NEW SECTION. **Sec. 6.** Before adoption of a final rule by the
32 department and the department of health in section 5 of this act, the
33 governor shall review the proposed rule to ensure that a safer
34 technically feasible alternative to the use of commercial
35 decabromodiphenylether is not available at reasonable cost. In
36 reviewing the proposed rule, the governor shall consider the important

1 balance between the needs for continuing the use of commercial
2 decabromodiphenylether and protecting public health. Any final rule
3 adopted under section 5 of this act by the departments requires the
4 signature of the governor.

5 NEW SECTION. **Sec. 7.** By December 15, 2008, the department, the
6 director of fire protection, and the department of health must report
7 to the appropriate committees of the legislature on the availability of
8 safer, technically feasible alternatives for those products prohibited
9 from the manufacture, sale, or distribution under section 4 of this act
10 and any additional evidence of the potential harm posed by commercial
11 decabromodiphenylether.

12 NEW SECTION. **Sec. 8.** Nothing in this chapter restricts the
13 ability of a manufacturer, importer, or distributor from transporting
14 products containing polybrominated diphenyl ethers through the state,
15 or storing such products in the state for later distribution outside
16 the state.

17 NEW SECTION. **Sec. 9.** After January 1, 2007, a manufacturer of
18 products containing a polybrominated diphenyl ether that has been
19 restricted under this chapter must notify persons that sell the
20 manufacturer's products about this chapter.

21 NEW SECTION. **Sec. 10.** (1) The department and the department of
22 health must review additional uses of commercial
23 decabromodiphenylether.

24 (2) The department and the department of health must report their
25 findings and recommendations to the appropriate committees of the
26 legislature by December 15, 2007.

27 NEW SECTION. **Sec. 11.** (1) By January 1, 2007, the department of
28 general administration shall:

29 (a) Give priority and preference to the purchase of equipment,
30 supplies, and other products that do not contain polybrominated
31 diphenyl ethers; and

32 (b) Make available for purchase and use by all state agencies only

1 equipment, supplies, and other products that do not contain
2 polybrominated diphenyl ethers.

3 (2) The department of general administration shall, by January 1,
4 2007, revise its rules, policies, and guidelines to implement this
5 chapter.

6 NEW SECTION. **Sec. 12.** (1) Retailers who unknowingly sell products
7 banned under sections 2 and 4 of this act are not liable under this
8 chapter.

9 (2) In-state retailers in possession of products on January 1,
10 2010, that are banned for sale under section 4(1) of this act or are in
11 possession of products on January 1, 2012, that are banned for sale
12 under section 4(2) of this act may exhaust their stock through sales to
13 the public.

14 (3) The department must develop a program to assist in-state
15 retailers in identifying potential products containing polybrominated
16 diphenyl ethers in their inventory before the effective date of product
17 bans under sections 2 and 4 of this act.

18 (4) If a retailer unknowingly possesses products that are banned
19 for sale under sections 2 and 4 of this act and the manufacturer does
20 not recall the products, the retailer may exhaust its existing stock
21 through sales to the public; however, no additional banned stock may be
22 sold or offered for sale.

23 NEW SECTION. **Sec. 13.** (1) Enforcement of this chapter shall rely
24 heavily on notification and information exchange between the department
25 and manufacturers. The department shall achieve compliance with this
26 chapter using the following enforcement sequence:

27 (a) Before the effective date of the product bans in sections 2 and
28 4 of this act, the department must prepare and distribute information
29 to in-state manufacturers and out-of-state manufacturers, to the
30 maximum extent practicable, to assist them in identifying products
31 prohibited for manufacture, sale, or distribution under this chapter;

32 (b) The department may request a certificate of compliance from a
33 manufacturer. A certificate of compliance attests that a
34 manufacturer's product or products meets the requirements of this
35 chapter;

1 (c) The department must issue a warning letter to a manufacturer
2 that produces, sells, or distributes banned products in violation of
3 this chapter. The department shall offer information or other
4 appropriate assistance to the manufacturer in complying with this
5 chapter. If after one year, compliance is not achieved, penalties must
6 be assessed under subsection (3) of this section.

7 (2) A manufacturer that produces, sells, or distributes a product
8 prohibited from manufacture, sale, or distribution under this chapter
9 shall recall such products and reimburse the retailer or any other
10 purchaser for the product and any applicable postage and handling for
11 returning the products.

12 (3) A manufacturer of products containing polybrominated diphenyl
13 ethers in violation of this chapter is punishable by a civil penalty
14 not to exceed one thousand dollars for each violation in the case of a
15 first offense. Manufacturers who are repeat violators are liable for
16 a civil penalty not to exceed five thousand dollars for each repeat
17 offense. Penalties collected under this section must be deposited in
18 the state toxics control account created in RCW 70.105D.070.

19 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
20 constitute a new chapter in Title 70 RCW."

21 Correct the title.

EFFECT: Limits the deca-BDE ban to specific products. Extends
the implementation date for banning deca-BDE from July 1, 2007, to July
1, 2010, for certain electronic enclosures and July 1, 2012, for
upholstered furniture and mattresses. Removes the authority for the
Governor to grant an exemption from the ban on deca-BDE and authorizes
the Department of Ecology to grant exemptions to the deca-BDE ban by
rule between July 1, 2010, and July 1, 2012. Directs manufacturers to
recall banned products and reimburse persons for costs to return those
products. Directs the Department of Ecology to use a sequence of
enforcement techniques to achieve compliance with this chapter.
Requires the Department of Ecology to consult with the Director of Fire
Protection when determining if there are safe alternatives available.

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